

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION	)	MDL No.1456
	)	Master File No. 01-CV-12257-PBS
	)	Subcategory 06-11337
THIS DOCUMENT RELATES TO: <i>United States of America ex rel. Ven-A-Care of the Florida Keys, Inc., et al. v. Boehringer Ingelheim Corporation, et al., Civil Action No. 07-10248-PBS</i>	)	Judge Patti B. Saris
	)	Magistrate Judge Bowler

**ROXANE DEFENDANTS' UNOPPOSED MOTION TO SUBSTITUTE MOTIONS  
FOR ARGUMENT AT THE SEPTEMBER 14, 2009 HEARING  
BEFORE MAGISTRATE JUDGE BOWLER**

Defendant Boehringer Ingelheim Roxane, Inc. f/k/a Roxane Laboratories, Inc. ("Roxane") respectfully moves to substitute Roxane's Expedited Motion For Leave To Depose Carolyn Helton and Robin Kreush Stone (Dkt. No. 6328-6330; Sub-Dkt. No. 333-335) for argument at the September 14, 2009 hearing before Magistrate Judge Bowler in place of Roxane's Motion to Compel Production of Documents and Rule 30(b)(6) Deposition of Kansas Health Policy Authority (Dkt. No. 5697-5698 and Sub-Dkt. No. 78-79), which is currently noticed for that hearing. In support of its motion Roxane states:

1. Roxane's Expedited Motion For Leave To Depose Carolyn Helton and Robin Kreush Stone deals with time-sensitive issues regarding two declarations referenced in and provided with the United States' July 2009 summary judgment filing. There is a pending October 20, 2009 date set for summary judgment oral argument before Judge Saris. Roxane believes that resolution of this motion prior to the summary judgment hearing will benefit all parties.

2. In contrast, Roxane's Motion to Compel Production of Documents and Rule 30(b)(6) Deposition of Kansas Health Policy Authority does not seek expedited relief, and does not require argument or a final decision prior to the Court's October 2009 summary judgment hearing.

3. Roxane counsel has communicated with Government counsel, George B. Henderson, who stated that the United States will not oppose Roxane's motion.

4. Dey Laboratories, Inc. has properly joined in Roxane's expedited motion and assents to having its companion motion heard at the September 14 hearing.

For the above reasons, Roxane respectfully requests that this motion be granted, and that the Court hear argument on Roxane's Expedited Motion For Leave To Depose Carolyn Helton and Robin Kreush Stone at the September 14, 2009 hearing, and delay argument on Roxane's Motion to Compel Production of Documents and Rule 30(b)(6) Deposition of Kansas Health Policy Authority until a later date.

Dated: September 4, 2009

Respectfully submitted,

/s/ Eric T. Gortner  
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*On behalf of Defendants Boehringer Ingelheim  
Roxane, Inc. and Roxane Laboratories, Inc.*

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing was delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on September 4, 2009, a copy to LexisNexis File and Serve for posting and notification to all parties.

By: /s/ Eric T. Gortner  
Eric. T. Gortner